



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200920057

FEB 17 2009

UIC: 408.03-00

TEMPERATURE

Legend:

Taxpayer A =

Taxpayer B =

Bank M =

IRA X =

IRA Y =

Amount S =

Amount T =

Date 1 =

Dear :

This is in response to your letter dated July 26, 2007, and supplemented by a letter dated September 17, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling request.

Taxpayer A, age 63, and Taxpayer B, age 62, represent that they received distributions from their individual IRAs. Taxpayer A and Taxpayer B assert that their failure to

accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to their medical conditions and treatments which impaired their ability to accomplish timely rollovers. They further represent that Amount S and Amount T have not been used for any other purpose.

On Date 1, Taxpayer A received a distribution of Amount S from IRA X and Taxpayer B received a distribution of Amount T from IRA Y. They intended to roll the amounts into new IRAs, but placed the amounts in their checking accounts at Bank M until they could find suitable IRAs. During the 60-day period following the distribution, Taxpayer B was under treatment for complications from treatment for cancer. She was required to use a feeding tube and pump that restricted her movement. Until her illness, Taxpayer B was primarily responsible for the family finances, because Taxpayer A was previously disabled due to recurring epileptic episodes and medication to control them, both of which caused confusion and memory loss. As a result of Taxpayer B's severe illness, she relied on Taxpayer A to manage their finances, including completing the rollover of the IRAs. However, as a result of Taxpayer A's medical condition, he believed that the funds were already in IRAs and he did not complete the transactions during the 60-day rollover period.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount S from IRA X and the distribution of Amount T from IRA Y.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or,
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion if the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and, (4) the time elapsed since the distribution occurred.

The information and documentation presented by Taxpayer A and Taxpayer B is consistent with their assertion that their failure to accomplish a timely rollover was caused by the effects of their individual medical conditions, which led to Amount S and Amount T being held in a non-IRA checking account during and beyond the 60-day rollover period.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount S from IRA X and the distribution of Amount T from IRA Y. Taxpayer A and Taxpayer B are granted a period of 60 days from the issuance of this ruling letter to contribute Amount S and Amount T into individual rollover IRAs. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount S and Amount T will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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This ruling is directed solely to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact
I.D. No. , at (202) - .

SE:T:EP:RA:T4,

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose